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CHOATE ON DISCOVERY, SECOND EDITION

Cudmore
Release No. 6, July 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in May 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the May 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This book provides practitioners with both a procedural and analytical framework for the discovery process, covering such areas as oral examination, documentary discovery and medical examinations, as well as less commonly used discovery tools such as interrogatories and inspection of property. Features include thematic organization so that knowledge of discovery rule number is not required by researchers, and case law summaries that are clear and concise, covering the meaningful judgments and orders that interpret the Discovery rules.

What's New in this Update:

This release, which updates the case law in Chapter 2 (Examination for Discovery), and Chapter 3 (Discovery of Documents), Chapter 5 (Physical Examinations), and Chapter 6 (Inspection and Preservation of Property) features 50 new case digests covering topics related to the discovery process.

Case Law Highlights

- **Chapter 5 — Physical Examinations — Place of Examination** — An action arose following a car accident. The plaintiff claimed musculoskeletal injuries and chronic pain. The plaintiff tendered one expert report opining she suffered a myriad of accident-related impairments including possible head injury/post-concussion syndrome, psychological problems, and depression. The plaintiff tendered another expert report opining she suffered post-traumatic stress disorder, major depressive disorder with comorbid anxiety, post-concussive syndrome, pain disorder, soft tissue injury and possible traumatic brain injury. With the trial scheduled to begin in three months, the defendants brought a motion compelling the plaintiff to attend an examination by the physiatrist. The physiatrist insisted the examination could not be conducted virtually. Although the plaintiff did not object, she did not wish to attend in person on the basis the heart surgery and cancer treatments placed her at increased risk for COVID-19. The motion was granted. There was evidence the location at which the examination was to be conducted had extensive safety protocols in place that complied with the guidelines issued by both the Ministry of Health and College of Physicians and Surgeons. Although understandable the plaintiff wanted to limit in-person visits to those strictly necessary, the examination by the physiatrist was relevant to the musculoskeletal injuries and chronic pain she had put in issue and necessary: *Mierzejewski v. Brook*, 2021 CarswellOnt 4123, 2021 ONSC 2295 (Ont. S.C.J.).
- **Chapter 6 — Inspection and Preservation of Property — When Inspection May Be Allowed** — The plaintiff was

injured on a worksite while attempting to slide a window. The plaintiff brought a motion allowing the expert to examine and test the windows on site. The motion was granted. The Rules of Civil Procedure permit such inspection and testing. The nature and condition of the window was central to the litigation. No prejudice to the defendant would result beyond having to replace any window harmed in the testing. The defendant's expert was entitled to attend the testing: *Donko v. Sleepy Hollow Country Club Ltd.*, 2021 CarswellOnt 96, 2021 ONSC 192 (Ont. S.C.J.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

